

Cherokee Removal†

John Collier served as United States Commissioner of Indian Affairs from 1933 to 1945. In this passage from his authoritative book, which won the Anisfield-Wolf Award in 1948, he tells the infamous story of Chief Justice John Marshall, President Jackson, the Cherokee removal, and the "trail of tears." He cites this as a sample of typical American policy toward Indians.

More than any other tribe, the Cherokee Nation furnished the crystallizing thread of the United States government policy and action in Indian affairs. The Cherokees were the largest of the Iroquoian tribes; but they never joined the Confederacy, and we never think of them as being Iroquois. In the years before Great Britain's power ended, the British Crown had intervened repeatedly to check the seizure of Cherokee lands by the "borderers." Thus it came about that in the war of the Revolution the Cherokees allied themselves with the British.

Not until 1794 did they stop fighting. The treaty which they then made with the United States was kept by them as a sacred thing.

The Cherokees met every test of peacefulness, of practicality, of Christian profession and conduct, of industry and productiveness, of out-going friendliness to the whites, of "progress" in domestic order and in education. They even offered little resistance to marriages between young men of the whites and their young girls. One of their great men, whom we know as Sequoia, and whom we have idealized, invented an alphabet considered second only to our European system in the various schemes of symbolic thought representation, and the tribe quickly became literate in our European sense. The Cherokees wrote a constitution of the American white man's kind. They established a legislature, a judiciary, and an executive branch. A free press and public schools were set up. Again and again the tribe surrendered great areas of its treaty-held land. Over and over again, however hard pressed, it kept the faith.

Yet, in the years that followed, the treaty was breached both in the letter and in the spirit by the United States over and over again. And it is clear that nothing the Indians could have been or not been, could have done or not done, would have changed the white man's heart and will. The remnant of their lands included seven million acres, mostly mountain country in the region where Georgia, North Carolina, and Tennessee converge, what is now called the highland country. The Cherokees had to be removed even from these last fastnesses.

In 1828 Andrew Jackson was elected president. He was a "borderer" and had been a famous Indian fighter. Immediately he put through Congress an act called the Indian Removal Act which placed in his own hands the task of leading or driving all Indian tribes to some place west of the Mississippi River. At about the same time gold was discovered in the Cherokee country. The Georgia Legislature passed an act annexing—confiscating—all Cherokee lands within the state, declaring all laws of the Cherokee Nation to be null and void, and forbidding Indians to testify in any state court against white men. The Cherokee lands were distributed to whites through a lottery system.

In 1830, through John Ross, its chief, the tribe vainly appealed to President Jackson. Then it appealed to the Supreme Court. The Court refused to take jurisdiction; the tribe, it ruled, was not a foreign nation. "If it be true," said the Court, "that the Cherokee Nation has rights, this is not the tribunal in which these rights are to be asserted. If it be true that wrongs have been inflicted, and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future."

The conscience of the Court was troubled by this Pilate-like decision. Two years later, it had an opportunity to reconsider. Three white missionaries refused to swear the oath of allegiance to Georgia while resident in the defined country of the Cherokee Nation. They were arrested, chained together, and forced to walk twenty-one miles behind a wagon to jail. Two Methodist preachers intervened against the brutality; they were chained with the others and thrown into jail with them. The missionaries were tried and sentenced to four years' hard labor in the state penitentiary. The case came up before the Supreme Court, and the Court, in effect reversing itself, ruled that Indian tribes or nations

had always been considered as distinct, independent, political communities, retaining their original natural rights . . . and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence—its right to self-government—by associating with a stronger, and taking its protection.

The Cherokee Nation, then, is a distinct community, occupying its own territory, with boundaries accurately described in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress.

President Jackson retorted to the Court: "John Marshall (the Chief Justice) has rendered [made] his decision; now let them enforce it."

So Georgia, and the whole of the federal government apart from the helpless Court, continued their policies toward the Cherokees. The whites could prospect for gold anywhere, the Indians not at all, though the land was their own. The President's commissioners harried some of the Cherokees into signing a treaty giving up the seven million acres still theirs for 4.5 million dollars which would be deposited "to their credit" in the United States Treasury. The leaders and people had been immovable, but in an arranged meeting attended by some four hundred of the tribe's seventeen thousand members, the fictional treaty was extorted. The Senate quickly ratified this "treaty."

Three years passed and the Cherokees were still upon their land. Then came General Winfield Scott with seven thousand troops and a nonmilitary rabble of followers to invade the Cherokee domain. Cherokee men, women, and children were seized wherever found and without notice removed to concentration camps. Livestock, household goods, farm implements, everything went to the white camp followers; the homes usually were burned. After this the long trek to Arkansas in mid-winter was begun. An eyewitness in Kentucky reported:

Even aged females, apparently nearly ready to drop into the grave, were traveling with heavy burdens attached to their backs, sometimes on frozen ground and sometimes on muddy streets, with no covering for their feet.

Of about fourteen thousand who were herded onto this "trail of tears," as it came to be called, four thousand died on the way. While a hundred Cherokees a day were perishing of exhaustion and cold on that dreadful road, President Van Buren on December 3, 1838 addressed Congress: "The measures [for Cherokee removal] authorized by Congress at its last session have had the happiest effects. . . . The Cherokees have emigrated without any apparent reluctance." The financial costs of the trail of tears were charged by the government against the funds credited to the tribe pursuant to the fraudulent treaty.

As the final company of the Cherokees started on the long trail, their leaders held the last council they would ever hold on their home ground. They adopted a resolution which ought to be remembered forever. They did not ask pity for their people, because they knew there would be no pity, and asking pity was never the Indian's way. They did not reproach or condemn Georgia or the United States government. They did not quote John Marshall's decision, since that decision, for them, had been written on water. To the violated treaties and fraudulent treaties they made no reference; for they had now learned that which General Francis C. Walker was to phrase immortally when, in 1871, writing as Commissioner of Indian Affairs, he described the white man's view concerning honor toward Indians: "When dealing with savage men, as with savage beasts, no question of national honor can arise. Whether to fight, to run away, or to employ a ruse, is solely a question of expediency." Their treaties, the Cherokees had learned, had been "ruses" of the white man. So the resolution, passed in what then seemed to be their final hour, was addressed to no man, and leaned on no consideration, except the principle of justice which they believed was undying:

The title of the Cherokee people to their lands is the most ancient, pure and absolute known to man; its date is beyond the reach of human record; its validity confirmed by possession and enjoyment antecedent to all pretense of claim by any portion of the human race.

The free consent of the Cherokee people is indispensable to a valid transfer of the Cherokee title. The Cherokee people have neither by themselves nor their representatives given such consent. It follows that the original title and ownership of lands still rests in the Cherokee nation, unimpaired and absolute. The Cherokee people have existed as a distinct national community for a period extending into antiquity beyond the dates and records and memory of man. These attributes have never been relinquished by the Cherokee people, and cannot be dissolved by the expulsion of the Nation from its territory by the power of the United States government.

That was all. Then these men of true greatness, through fraud and violence stripped of everything, set forth on the bitter trail to a place which was to be no lasting home.